

**State of Board of Health
Minutes
October 17, 2008 – 9:00 a.m.
Perimeter Center, 9960 Mayland Drive
Richmond, Virginia 23233**

Members present: Fred Hannett, Chairman; Dr. Craig Reed, Vice Chairman; Dr. Julie Beales; Scott Burnette; Jim Edmondson; Kandy Elliott; Barbara Favola; Dr. Charles Johnson; Jack O. Lanier, Dr. P.H.; Dr. Bennie Marshall; Dr. Bushan Pandya; Ed Spearbeck; and David Summers

VDH staff present: Dr. Karen Remley, State Health Commissioner; Dr. Jim Burns, Deputy Commissioner for Public Health; Jeff Lake, Deputy Commissioner for Community Health Services; Joan Martin, Deputy Commissioner for Administration; Joe Hilbert, Executive Advisor; Martha Pulley, Policy Advisor; Catherine West, Administrative Assistant; Michael McMahon, Deputy Director, Office of Financial Management; Phil Giaramita, Director of Communications; Gary Brown, Director, Office of Emergency Medical Services; Dr. David Suttle, Director, Office of Family Health Services; Chris Durrer, Director, Office of Licensure and Certification; Erik Bodin, Director, Division of Certificate of Public Need; Carrie Eddy, Policy Analyst, Office of Licensure and Certification; Bob Hicks, Director, Office of Environmental Health Services; Allen Knapp, Office of Environmental Health Services; Dr. Carl Armstrong, Director, Office of Epidemiology; Mike Welling, Division of Radiological Health; Dr. Michael Royster, Director, Office of Minority Health and Public Health Policy.

Others Present: Matt Cobb, Robin Kurz, and Kerri Nicholas Attorney General's Office; Karen Wagner, Chair, State EMS Advisory Board; Randy Abernathy, Vice-Chair, State EMS Advisory Board.

Call to Order

Mr. Hannett convened the meeting at 9:00 a.m.

Approval of Minutes

The minutes of the July 18, 2008 Board meeting were approved unanimously, following one correction on page 3, changing "VCHC" to "VHHA".

Matrix of Pending Regulatory Actions

Joe Hilbert reviewed the listing of all of the pending VDH regulatory actions. There were no questions.

Commissioner's Report/Budget Update

Dr. Remley provided the Commissioner's report. Dr. Remley discussed the status of the recruitment for the Deputy Commissioner for Emergency Preparedness and Response (EP&R), telling the Board that the position had been offered to a qualified applicant but that the applicant

had declined the offer. The recruitment is ongoing, and applications have been received from several candidates. Dr. Remley also announced that Dr. Lisa Kaplowitz had been appointed as the Acting Deputy Commissioner for EP&R, replacing Dr. Bill Nelson who stepped down to resume his full time duties as Director of the Chesterfield Health District.

Dr. Remley introduced Phil Giaramita, the new VDH Director of Communications. She told the Board that the update to the State Rural Health Plan had been drafted, but was still being reviewed internally. The updated plan will be sent to the Board for review and comment subsequent to the meeting.

Dr. Remley told the Board that VDH had undertaken an initiative over the summer to eliminate the use of bottled water within the agency. The initiative is working very well.

VDH is planning to make the Madison Building a tobacco-free worksite effective November 20, in conjunction with the observance of the Great American Smoke Out. VDH is working on the details with the Secretary of Administration and the Office of Human Resources.

Dr. Remley briefed the Board on the agency's FY09 budget reduction plan, including the actual agency budget reductions announced by Governor Kaine. She explained VDH's rationale and approach to developing its budget reduction plan, which included placing a priority on protecting core public health services. In addition, the Governor wanted to protect prenatal care services and dental services from budget reductions. It was explained that demand for core public health services is largely counter-cyclical, as the economy weakens the demand for services increases. The Board was briefed concerning the current state revenue forecast for FY10. Currently, there is a projected \$1.5 billion revenue shortfall for FY10.

Dr. Remley noted that this had been a very challenging process, requiring the agency to make many difficult decisions, and there were no good choices. Approximately 50 of VDH's 109 recommended budget reduction strategies were accepted by the Governor. Dr. Remley explained to the Board that the agency's FY09 strategies that were not accepted by the Governor could still be accepted as part of additional reductions for FY10. Dr. Remley explained that, in comparison to the percent reduction experienced by some other agencies, VDH did not fare that poorly. The amount of VDH's general fund reduction for FY09 is \$14.7 million, out of a \$176 million general fund budget. Elimination of various vacant positions will reduce VDH's ability to deliver core public health services.

There was a discussion concerning VDH employment levels, and the use of contractors. Dr. Remley explained that VDH has 3,700 full time classified employees, 663 part time wage employees, and about 240 contract positions. Therefore, there are approximately 4,700 individuals who work at VDH in some capacity. It is anticipated that there will be some employee layoffs. November 25 is the current target date for the layoffs to become effective.

Dr. Remley mentioned one of the reductions, the elimination of two staff from the central office, funded by a federal grant which supported the statewide asthma coalition. VDH had already received questions and complaints from stakeholders concerning this reduction. Dr. Remley said that VDH will work with the CDC and the affected stakeholders to identify workable options

that would allow this federal grant funding to remain in Virginia, despite the loss of the VDH positions.

About half of VDH's FY09 reductions represent one time savings taken from unspent balances. There was a discussion concerning the process by which unexpended VDH funds can accumulate into relatively large balances. Mike McMahon said that there is not an established procedure to monitor balances, but that the Department of Planning and Budget is supposed to monitor agency balances. Dr. Reed asked if VDH could invest its unexpended balances. It was explained that only the Treasury Department is authorized to invest state funds.

There was a brief discussion concerning funding for the nursing scholarship program, and the managed care health insurance plan quality assurance program.

Scott Burnette asked if there had been any discussion of leveraging the resources of community hospitals in order to help provide core public health services. Dr. Remley responded that VDH does need to think differently about how to deliver services. Jeff Lake said that such partnerships will likely accelerate at the local level in response to reductions in local health district cooperative budgets. Fred Hannett said that each of the constituent groups represented on the Board may have something to offer to help VDH and its local health departments fill the gaps left by the budget reductions. He encouraged each Board member to think about this and requested that, by the first Board meeting in 2009, each Board member be prepared to offer some examples of how their constituent organizations have stepped forward to help bridge the gap.

Dr. Pandya complimented VDH for the letter which it sent to all of its employees concerning the budget reductions. Dr. Pandya said that the letter was "very compassionate."

Dr. Remley said that VDH would develop some talking points for the Board concerning the Governor's proposed FY10 budget reductions for VDH once they are announced

Fee Update

Joan Martin briefed the Board on VDH's work to identify and assess all of the fees which it is authorized to impose. A scorecard for assessing fees is under development. VDH is analyzing the results of a survey of other states. An automated template has been developed for calculating costs by program, so that those identified costs can serve as the basis for establishing fees. The Office of Licensure and Certification, which has eight fees, is the first VDH office to have used the automated template.

State EMS Advisory Board Update

Karen Wagner, Chair of the State EMS Advisory Board, provided the update.

The Board's Medivac Committee has been working to develop draft recommendations that will ultimately be presented to the Board of Health. Medivac safety is an emerging issue across the country. There was recently a Medivac helicopter crash in Illinois. In that case, the Medivac flight was ordered in order to avoid vehicular traffic on the ground, not because of medical

necessity. Karen said that this case is being studied nationally. Certain aspects of Medivac flights are currently subject to regulation by the Federal Aviation Administration. However, there are no state regulations of items such as flight paths and take-offs. There are some agreements, but the EMS Advisory Board would like to see greater state regulation of this service.

The EMS Advisory Board's Professional Development Committee is looking at scope of practice issues and wants to promote a standard level of care throughout the state.

Karen briefed the Board on the issues surrounding Medicare's overpayment of medical transport companies and current efforts to recoup that overpayment. The amount of the overpayment in Virginia, made through the Department of Medical Assistance Services (DMAS), is \$13.4 million. The federal government has mandated that the state attempt to obtain repayment of these funds. Karen said that having to repay these funds will harm these medical transport companies and that will have a negative effect on Virginia's overall EMS system. The VDH Office of EMS has been able to work with DMAS to communicate effectively with EMS providers across the state.

The Office of EMS has hired a new Operational Medical Director.

Randy Abernathy, Vice-Chair of the EMS Advisory Board, briefed the Board concerning the work of the Process Action Team (PAT) which has been charged with developing a recommendation for realignment of the Regional EMS Councils. The PAT has been meeting every 30 days. Randy said that the PAT will be making a recommendation to the EMS Advisory Board, which will in turn make a recommendation to the Board of Health.

Karen Wagner concluded the update by saying that the EMS Advisory Board is looking at the best way to recognize EMS volunteers. She also told the Board that the 29th Annual EMS Symposium will be held in Norfolk next month.

Public Comment Period

There were no comments from any member of the public.

State Medical Facilities Plan Task Force Update

Chris Durrer, Director of the VDH Office of Licensure and Certification, provided the update. The initial meeting of the task force was held on September 30. Joe Hilbert explained to the Board that several of the items discussed at the initial meeting of the task force were actually outside the scope of the State Medical Facilities Plan, which the task force is responsible for reviewing and updating. One such issue involves the types of health care providers that are required to report utilization data to Virginia Health Information, Inc (VHI). Jim Edmonson stated that the VHI patient level data base needs to be broadened, and urged VDH and the Board to advocate for legislation to require additional types of health care providers to report utilization data to VHI.

12 VAC 5-490 – Radiation Protection Regulations [Fee Schedule for X-ray] (Final Amendments)

Dr. Carl Armstrong, Director of the Office of Epidemiology, presented the final amendments to the Board. Jim Edmondson asked if VDH had ever identified instances where deficient or unapproved xray equipment was being used. Mike Welling, from the Division of Radiological Health, responded that VDH had identified such instances as a result of inspections. Dr. Reed asked if VDH used third-party inspectors. Dr. Armstrong responded that most of the inspections are done by private inspectors.

The Board unanimously approved the final amendments.

12 VAC 5-490 – Radiation Protection Regulations [Fee Schedule for Radioactive Materials] (Final Amendments)

Dr. Armstrong presented the final amendments to the Board. Jim Edmondson commented that some of the proposed fees are quite high, as much as \$200,000. He asked from how many facilities in the state was VDH likely to collect a \$200,000? Dr. Armstrong responded that all of the fees are based on VDH's costs. He also said that currently the U.S. Nuclear Regulatory Commission (NRC) assesses and collects these fees. When Virginia becomes an "Agreement State", VDH will collect fees currently collected by the NRC.

The Board unanimously approved the final amendments.

12 VAC 5-90 – Regulations for Disease Reporting and Control [MRSA Reporting] (Final Amendments)

Dr. Armstrong presented the final amendments to the Board. Dr. Reed asked how these amendments would affect physicians who diagnose MRSA in their offices? Dr. Reed also stated that he was not sure that this regulatory action actually accomplishes what some people think should be done to address MRSA. Dr. Burns responded by saying that this is not a perfect solution, but it is a workable solution. Dr. Armstrong said that this regulatory action provides VDH with an indirect handle on MRSA incidence over time. Dr. Armstrong also said that it is not realistic nor cost effective to think that VDH will be conducting interventions on every single case of MRSA that is reported. Most cases of MRSA are handled properly in a physician's office. Dr. Armstrong said that there are an estimated 40,000 cases of MRSA in Virginia each year.

The Board approved the final amendments 12-1. Dr. Reed voted "no."

12 VAC 5-110 – Regulations for the Immunization of School Children (Proposed Amendments)

Dr. Armstrong presented the proposed amendments to the Board. In response to a question by Barbara Favola, there was a brief discussion concerning the issue of health risks posed by immunizations, and the obligation of VDH to mention those risks as part of the regulatory action summary. Dr. Armstrong said that risk is taken into consideration by the CDC's Advisory

Committee on Immunization Practices and other expert organizations. Dr. Armstrong also told the Board that the Code of Virginia allows for a medical exemption to school entry immunization requirements. Dr. Burns stated that each individual patient who receives immunizations from VDH has to sign a form acknowledging that VDH staff have discussed immunization safety and risk issues with them.

Jim Edmondson asked about any evidence linking immunizations with autism. Dr. Armstrong replied that the evidence was mostly anecdotal, and that there is no convincing scientific evidence establishing such a link. Dr. Armstrong explained that there is a timing issue involved, in that the onset of autism typically occurs at about the same age in which children are being immunized. However, that does not prove that immunizations cause autism.

Barbara Favola recommended that the Agency Background Document (Form TH-02) should include some discussion of the risk issue. Dr. Armstrong agreed to make that change to the Agency Background Document.

The Board unanimously approved the proposed amendments.

Lunch Speakers – Linda Hines, RN, MS, Vice President of Medical Management, Virginia Premier Health Plan; Melvin Pinn, MD, MPH, Senior Medical Director, Virginia Premier Health Plan

Ms. Hines and Dr. Pinn spoke to the Board concerning “Chronic Disease Prevention – A Health Plan’s Perspective”. Their presentation included a discussion of program components and outcome measures. They also discussed features of case management versus care coordination in Medicaid managed care. In addition, they provided information describing the unique challenges involved in serving their members who are diabetics.

12 VAC 5-650 – Onsite Sewage Systems – Schedule of Civil Penalties (Proposed Amendments)

Bob Hicks, Director of the Office of Environmental Health Services, presented the proposed regulations to the Board. In response to a question from Jim Edmondson, Bob Hicks stated that the current enforcement process was largely complaint-driven. Bob also explained that VDH is currently working on a comprehensive revision of the onsite sewage system regulations.

The proposed amendments were approved unanimously.

12 VAC 5-612 – Regulations for Onsite Sewage Indemnification Fund (Proposed Amendments)

Bob Hicks presented the proposed regulations to the Board. There was a brief discussion of the fact that the proposed regulations are based largely on current VDH policy and practice.

The proposed amendments were approved unanimously.

12 VAC 5-462 – Swimming Pool Regulations Governing the Posting of Water Quality Test Results [Requirements for Public Water Recreational Facilities] (Notice of Intended Regulatory Action)

Bob Hicks presented the proposed regulations to the Board. Dr. Reed asked, under the current regulations, when are test results required to be posted and how often. Mr. Hicks said that he did not immediately know the answer, and would provide Dr. Reed with that information. There was a discussion of whether the entire regulation would be subject to amendment pursuant to this NOIRA such that it could be used to amend testing requirements for pools, or whether amendments needed to be limited to water recreational facilities operated for public use. There was additional discussion concerning options for expediting the timeframe necessary to promulgate this regulation.

After further discussion, and upon advice of legal counsel, the Board unanimously agreed to not act upon the NOIRA. While it supports the NOIRA, the Board wants to promulgate additional amendments to this regulation in order to expand its provisions. The Board further unanimously agreed to direct VDH staff to draft a fast track regulatory action that would include addressing water quality testing requirements for both pools and water recreational facilities. The Board unanimously agreed to authorize the Commissioner to review and approve the fast track action on its behalf.

Member Reports

Dr. Jack Lanier – Consumer.

He is serving on the Education Board of the American Public Health Association, which will meet in San Diego next week. He will be meeting with the USDA Animal Plant Inspection Service. They are interested in some of the Board's initiatives. He is also serving on the American Hospital Association's Advisory Board, which is trying to promote diversity and provide trustee training.

Barbara Favola – Local Government

The Virginia Association of Counties (VACO) is grappling with the State's FY09 budget reductions, and looking at ways to continue providing health and human resources services at the local level. VACO may seek legislative approval for a half cent sales tax increase. She noted that some of the budget reductions are so severe that additional revenue is needed.

Dr. Bushan Pandya – Medical Society of Virginia

The MSV Foundation is involved with facilitating access to prescription drugs.

Uranium mining is an issue in Southside Virginia. There is currently a moratorium on mining. A potential public health issue is the effect of the mining activity on drinking water supplies. The MSV supports the continuation of the moratorium until such time as it is documented that there is no public health risk.

MSV is opposed to any increase in the statutory cap on medical malpractice liability judgments.

Dr. Charles Johnson – Virginia Dental Association

VDA is sponsoring a Mission of Mercy clinic in Greenville. He discussed the elimination of the Dental Scholarship and Loan Repayment Program as part of the Governor's FY09 budget reduction plan.

Dr. Bennie Marshall – Virginia Nurses Association

Key issues being addressed by the VNA include scope of practice for nurse practitioners, workplace safety, and staffing levels. VNA is also seeking to increase nursing presence at the local, state, and national levels.

David Summers – Virginia Association of Health Plans

He told the Board about an initiative with DMAS so that patient data follows individuals as they move from one health plan to another. VAHP is also seeking clarification from VDH concerning fees assessed by the MCHIP program.

Scott Burnette – Hospital Industry

VHHA continues to work with VDH on health care associated infection data, reporting, and quality issues. He is a member of the AHA Regional Health Policy Board, which is focusing on chronic disease issues.

Julie Beales – Medical Society of Virginia

She briefly discussed her perspective concerning the need to improve the way medicine is practiced in the U.S., particularly in terms of treating chronic disease.

Kandy Elliott – Nursing Home Industry

She commented that the nursing home industry loses \$7 per day per bed on residents paid for by Medicaid.

She told the Board about a recent CMS report concerning the average number of deficiencies in nursing homes. She said that the data in the report has been misinterpreted and misunderstood. She said that the data on the CMS Nursing Home Compare website is too old and not updated frequently enough.

She recently attended the groundbreaking for the Virginia Tech/Carillion School of Medicine.

Craig Reed – Virginia Veterinary Medical Association

The VVMA and the American Veterinary Association are concerned about potential regulatory changes in California which will permit less restrictive settings for the housing of chickens to lay eggs. The two organizations believe that this change will increase the risk for avian flu and salmonella. If California enacts this change, other states may follow.

Dr. Reed has been confirmed as a member on two Institute of Medicine committees, one of which will address risk-based food inspections.

Ed Spearbeck – Virginia Pharmacists Association

He briefed the Board concerning several prescription drug benefit and patient compliance issues.

Jim Edmondson – Consumer

He updated the Board concerning his involvement with the SMFP Task Force and the VDH health care associated infections workgroup.

Fred Hannett – Corporate Purchaser of Health Care

He plans to reach out to each Board member, one on one, concerning how best to engage various stakeholders and constituents. He also wants to reach out the business community.

Other Business

The Board considered proposed meeting dates for 2009, but deferred on a final decision pending the need for several members to consult their calendars. The Board directed VDH staff to follow-up with each member concerning suitable dates. A final decision concerning the official Board meeting schedule for 2009 was deferred.

Adjourn

The meeting adjourned at approximately 3:00 p.m.